

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

IN RE: ETHICON, INC. PELVIC REPAIR
SYSTEMS PRODUCTS LIABILITY
LITIGATION

Master File No. 2:12-MD-02327
MDL 2327

THIS DOCUMENT RELATES TO ALL
CASES

JOSEPH R. GOODWIN U.S. DISTRICT
JUDGE

**PLAINTIFF'S MOTION TO QUASH THE CROSS NOTICE
OF VIDEO DEPOSITION OF CHUCK AUSTIN**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Plaintiffs, and file this Motion to Quash the Cross Notice of Video Deposition of Chuck Austin, and in support thereof, respectfully shows the Court as follows:

1. This products liability case involves the implant and defectiveness of transvaginal mesh devices designed to treat stress urinary incontinence and pelvic organ prolapse in women. Defendants Ethicon, Inc. and Johnson & Johnson. ("Ethicon Defendants") designed, manufactured, marketed, distributed, and sold these transvaginal mesh devices.
2. On August 7, 2015, the Ethicon Defendants cross-noticed the deposition Chuck Austin for August 13, 2015.¹
3. The cross-notice improperly limits the parameters of the deposition. More specifically, the Ethicon Defendants seek to limit the amount of time for this deposition to four (4) hours. Yet, Plaintiffs in the MDL are allowed seven (7) hours for a deposition by the Federal Rules of Civil Procedure. *See* PRETRIAL ORDER #38; Fed. R. Civ. P. 30(d)(1).
4. The rules prescribe that "[a] party desiring to take the deposition of any person upon oral examination shall give *reasonable notice* in writing to every other party to the action." Fed. R.

¹ See Cross Notice of Video Deposition of Chuck Austin, attached hereto as Exhibit 1.

Civ. P. 30(b)(1) (emphasis added). Defendants filed their Cross Notice of Deposition on Friday, August 7, 2015 for a deposition to take place the following Thursday, August 13, 2015. Given the number of documents produced for Mr. Austin, Defendants have failed to provide reasonable notice in advance of the deposition which makes the proposed deposition is untimely,

5. Additionally, the date chosen for this deposition was not coordinated with Plaintiff's Leadership before this notice was filed.

6. WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests that the Ethicon Defendants' Cross Notice of Video Deposition of Chuck Austin be quashed; and for such other and further relief, either at law or in equity, to which Plaintiff has shown or will show herself justly entitled.

Dated: August 12, 2015.

Respectfully submitted,

/s/ D. Renee Baggett

Bryan F. Aylstock, Esq.

Renee Baggett, Esq.

Aylstock, Witkin, Kreis and Overholtz, PLC

17 East Main Street, Suite 200

Pensacola, Florida 32563

(850) 202-1010

(850) 916-7449 (fax)

E-mail: rbaggett@awkolaw.com

/s/ Thomas P. Cartmell

THOMAS P. CARTMELL

Wagstaff & Cartmell LLP

4740 Grand Avenue, Suite 300

Kansas City, MO 64112

816-701-1102

Fax 816-531-2372

E-mail: tcartmell@wcllp.com

CERTIFICATE OF SERVICE

I hereby certify that on August 12, 2015, I electronically filed the foregoing document with the Clerk of the court using CM/ECF system which will send notification of such filing to the CM/ECF participants registered to receive service in this MDL.

/s/ D. Renee Baggett

D. Renee Baggett, Esq.

Aylstock, Witkin, Kreis and Overholtz, PLC

17 E. Main Street, Suite 200

Pensacola, FL 32563

850-202-1010

850-916-7449

rbaggett@awkolaw.com